



Wisconsin Ethics Commission

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DATE: January 3, 2017

TO: Office of the Governor, State of Wisconsin
Members, Wisconsin State Senate
Members, Wisconsin State Assembly

FROM: Wisconsin Ethics Commission

SUBJECT: Potential Legislation for Consideration by the Wisconsin State Legislature

Introduction

This memorandum presents to a collection of potential changes to the statutes the Commission administers. These suggestions have been collected from comments from legislators, committees, lobbyists, principals, and state officials; staff experiences through administering the laws; and from public testimony at agency and legislative hearings. The Ethics Commission approved these recommendations at its October 10 and December 6, 2016 meetings. The Commission will continue to consider potential changes to the statutes the Commission administers and promptly communicate those to the Legislature for its consideration.

The Ethics Commission asks that the Legislature consider addressing the issues outlined below through legislation. Commission staff is available to assist Legislators and their staff regarding any of the potential changes addressed in this memorandum, as well as any other potential changes to the statutes that the Commission administers. The staff is also working with the Legislative Reference Bureau to draft legislation regarding these changes and will share those drafts for potential sponsorship as soon as they are available. Please contact the Ethics Commission Administrator, Brian Bell, with any questions regarding the Ethics Commission's recommendations. He can be reached by phone at (608) 267-0715, or by email at BrianM.Bell@wi.gov.

Campaign Finance (Chapter 11, Wisconsin Statutes)

1. The campaign finance chapter makes several references to a "continuing report," mostly in regards to whether or not a post-special election report is required, however, the term is never defined in this chapter. The Legislature should consider defining this term as "a report that shall be filed by every registered committee, except as provided for in 11.0104, which includes all contributions, disbursements, and incurred obligations over the six month period of either January 1 – June 30 or July 1 – December 31, and must be filed within 15 days of the end of the reporting period with the appropriate filing officer." *Source: Legislators and Legislative Staff.*

Wisconsin Ethics Commissioners

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2. §11.0101(7). Listing the committee types that a conduit can give to in the definition makes it unclear whether conduits can give to federal candidates, out-of-state candidates, independent disbursement committees, referenda committees, or recall committees. Since the individual can give to all of those entities on their own, it seems logical that they should be able to do so through the conduit. The Legislature should consider revising this provision to remove the list of committees and instead state *any candidate or committee at the direction of the contributor*.
3. §11.0102(2)(a). The previous statute said only committees required to register *with the board* had to pay filing fees. This statute implicates local recall committees and referendum committees that register with local clerks, not the Ethics Commission. In order to limit the filing fees provision, the Legislature should revise this provision to only committees required to register with the commission under this chapter.
4. §11.0104. The yearly expiration and renewal of exempt status is reasonable for committees that file at the state level. However, for local filing officers, it's time consuming and doesn't accomplish very much. Virtually all local committees are on exempt status, and tend to remain that way as long as that person holds office. The Legislature should add qualifying language that would limit the annual requirement to registrants that file with the Commission.
5. §11.0104(1). This statute exempts committees from filing campaign finance reports if they have under \$2,000 in activity in a calendar year. It talks only about *amending* a registration statement - it does not, however, appear to allow a committee to claim the exemption when it files its initial registration. The Legislature should revise this provision by removing the word *amended* regarding claiming exemption. The Legislature could also consider changing the \$2,000 threshold to \$2,500 in order to be consistent with the threshold for registering most committees in Ch. 11.
6. §11.0104(2). This statute covers committees on exempt status that should not be required to file any reports. The use of the words *continuing reports* leaves the requirements for pre-primary, pre-election, and post-election reports ambiguous. Staff recommends changing *continuing reports* to *campaign finance reports*.
7. §11.0104(4). This provision exempts committees who are exempt from reporting requirements from filing termination reports. The Legislature should consider requiring termination reports regardless of exempt status to ensure disclosure of how residual funds were disposed.
8. §11.0201(4). Contribution limits cover the entire election period – four, six, or ten years for some candidates. In order to audit contribution limits properly, the entire election period must be covered. Committees should keep records for the entire campaign period plus an additional three years after the election occurs in order to facilitate potential audits. The Legislature could address this by modifying this provision to state that *the treasurer shall maintain records for the entire campaign period in an organized and legible manner for not*

less than three years after the date of the election in which the candidate committee participates.

9. §§11.0204(4)(d) and (5)(c), 11.0204(6)(b), 11.0304(4)(d) and (5)(c), 11.0404(2)(d) and (3)(c), 11.0504(4)(d) and (5)(c), 11.0604(4)(d) and (5)(c), 11.0704(4)(b) and (5)(b), 11.0804(4)(d) and (5)(c), and 11.0904(4)(d) and (5)(c). Several provisions regarding which committees are required to file a September continuing report in even years are not clear. Statutes require all partisan candidates and office holders to file the September continuing report, regardless of whether they are on the ballot in that election (e.g., state senators and state constitutional officers). The other provisions appear to limit the requirement to committees that make or accept contributions, make disbursements, or incur obligations to support or oppose one or more candidates (or referendum, in the case of referendum committees) at a partisan primary or general election. The Legislature should clarify the reporting sections of the statutes to either require all committees to file September continuing reports, or to specify a time period that would qualify a committee as having supported or opposed one or more candidates at a partisan primary or general elections (e.g., 60 days prior, during the campaign period, during the calendar year, etc.).
10. §§11.0204(1)(a) 7, 11.0304(1)(a) 7, 11.0404(1)(a) 7, 11.0504(1)(a) 7, 11.0604(1)(a) 7, 11.0804(1)(a) 6, 11.0904(1)(a) 7. These provisions exempt loans made to a committee of \$20 or less from itemized reporting. This conflicts with other contributions, which must be itemized, unless anonymous. The Legislature should remove the language *in an aggregate amount or value in excess of \$20* to require itemization of all contributions.
11. §§11.0204(7), 11.0304(7), 11.0404(7). These provisions establish a start date to begin late reporting, but no date to end them. The current statutes also require 72-hour late reporting of independent expenditures, and that reporting period ends on the day of the primary or election. The Legislature should add to these provisions *that late reporting requirements end on the day of the primary or the election.*
12. §11.0505 (1) (a) and §11.0605 (1) (a). This provision does not define starting and ending points for determining the aggregate spending on express advocacy and could lead to confusion on the requirement to file reports. The Legislature should require committees to begin counting express advocacy expenses 60 days prior to the primary and continue through the date of the election. Committees would aggregate totals separately for the spring and fall election periods.
13. §§11.0601(3)(b) and 11.1203(2)(a) and (b). The registration statute for independent expenditure committees directly prohibits any contributions to candidates, including, presumably, coordinated in-kind contributions. However, the coordination statute mentions independent expenditure committees as entities that can coordinate with candidates. This is a statutory conflict. The Legislature should consider changing §11.1203(2) (a) and (b) to remove the references to independent expenditure committees. *Source: staff.*

14. §11.1103. The Legislature should revise the citations in this provision to reference §11.1101 (1) to (4), instead of just (1) to (3). This appears to be a drafting oversight that did not account for (4) which addresses *other persons*.
15. §11.1103. Previously, campaign periods ended on December 31st and June 30th, corresponding with the January and June campaign finance reports. Under the current version of statutes, the campaign period ends on the day before the term of office begins. For the November Election the campaign period ends sometime during the first week of January; the campaign period for local officials sometime in April or May; and the campaign period for judges ends July 31st. Since reports covering early January are not due until July, and reports covering July are not due until January, this delays auditing by six months. It's more difficult for candidates to keep a tally of contributions, since one report covers two campaign periods. It's also confusing for local candidates and filing officers. The Legislature should modify this provision to state that campaign periods end on the same date as the last day covered under the first continuing report due after the election. This would reinstate the December 31st and June 30th dates.
16. §11.1103(2). This provision does not address limits that would apply to an active committee of a losing candidate from the day the term of office of the position sought. This would impact committees who cannot or do not terminate their committee, and particularly those with outstanding debts. The legislature could revise this provision to state that the limits of the office sought apply until the committee terminates, or a new declaration of candidacy is filed, at which time the limits of the office sought would apply. *Source: staff*.
17. §11.1208(2). The term “strictly personal use” is not defined by statute. The Federal Elections Commission does provide a definition of a “personal use,” a similar term. The Legislature should codify a definition of “strictly personal use” in statute.
18. §11.1302. This provision requires any committee that makes a donation to a charity or the common school fund to report that activity within five days to their filing officer. With the rewrite of chapter 11, §11.1208(2)(b)(3) specifically allows donations to charity or the common school fund. The original provision was added into statutes at the same time as another provision allowing committees to make donations to charity or the common school fund. Staff cannot identify a public interest that would require the disclosure within five days. In practice, some committees choose to donate contributions received from persons with negative or controversial reputations. CFIS currently allows them to disclose that voluntarily or with their next report. The legislature could remove this provision from statutes.
19. §11.1303(2)(a). This provision limits the requirement for a disclaimer (e.g., paid for by...) to express advocacy. Since express advocacy as defined in §11.0101(11) applies only to communications about candidates, referenda committees would not have to provide a disclaimer under current law. The Legislature could consider whether or not to extend this requirement to referenda committees.
20. §11.1304(6)(b). This provision allows committees with activity of less than \$1,000 over a campaign period (at least two years) to file paper reports. However, §11.0104 allows any

committee with less than \$2,000 of activity in a single year to claim exempt status and file no reports at all. Deleting this subsection would eliminate all paper reports filed with the Commission, without reducing the number of committees that are legally required to file reports. The Legislature should remove this provision or change it to require that all committees that file with the commission to file electronic reports, or claim the exemption from filing any reports. *Source: staff.*

21. §§11.1400(5) and 11.1401(2). These provisions imply that the Ethics Commission must act and make a probable cause determination prior to a district attorney acting on a complaint under the Commission's jurisdiction. An opinion of the Attorney General, [OAG 10-08](#), and §978.05 contradict this and state that the Commission and district attorneys have coequal jurisdiction. The Legislature should revise this provision to reflect the coequal jurisdiction of the Commission and district attorneys.

Lobbying (Subchapter III, Chapter 13, Wisconsin Statutes)

22. §13.62(10). The current definition of *lobbying* in the statutes does not include gubernatorial nominations or executive orders. As both of these actions could have significant influence on the administration of State Statutes and Administrative Code, the legislature could add gubernatorial nominations and executive orders to the types of actions that lobbyists attempt to influence, and require principals to report on this activity. In practice, many principals already report on gubernatorial nominations and executive orders as topics, roughly 100 times per session. Information on executive nominations subject to Senate confirmation is already available on the legislature's website and could be incorporated into the lobbying website just as bills are now automatically populated. The legislature could create a definition for executive action that would include nominations subject to confirmation and executive orders, and include executive action in the definition of lobbying. *Source: staff.*
23. §13.625. This provision outlines prohibited practices for lobbyists. The construction of this provision meanders back and forth between prohibited and permissible practices. For clarity, the State Legislature could revise this provision in order to clarify prohibited and permissible practices. Please refer to the additional memorandum included regarding proposed language revision for this section of the statutes.
24. §13.68(6). This provision of the statutes requires that the Commission "mail written notices" to lobbying principals and authorized lobbyists of those principals that fail to file timely reports. The legislature could modernize this provision to facilitate more cost-effective means of notification such as email by replacing "mail written notices" with "provide notice by the most effective means available" or other similar language. Commission staff has also requested an opinion from the Attorney General regarding the constitutionality of Commission's ability to restrict a principal's ability to lobby under this provision related to their right to free speech.
25. §13.685(4). This provision requires the Commission to provide a definition for lobbying topics by administrative rule. The Legislature could strike this provision and add the definition provided in [ETH 16.03](#) into the statute. *Source: staff.*

26. §13.685(7). This provision requires the Commission to provide information to legislative clerks related to lobbying. All required information is publicly available on the Commission's *Eye on Lobbying* website. This provision was enacted prior to the creation of the lobbying website. Commission staff and the Legislative Chief Clerks agree that this provision is unnecessary and could be removed. The State Legislature could consider eliminating this unnecessary provision.

Code of Ethics (Subchapter III, Chapter 19, Wisconsin Statutes)

27. §§16.753, 19.48(11), and 20.9305(2)(e). These provisions require the Commission to “maintain an internet site on which the information required to be posted by agencies under Wis. Stat. § 16.753(4) can be posted and accessed. The information on the site shall be accessible directly or by linkage from a single page on the internet.” This information has historically been available at <http://sunshine.wi.gov/>. Since the enactment of the Wisconsin Contract Sunshine Act, two other sites maintained by the State of Wisconsin provide the required information: VendorNet (<https://vendornet.wi.gov/>) and OpenBook Wisconsin (<http://openbook.wi.gov/>). In a 2011 report, the Legislative Audit Bureau similarly noted that this provision was outdated and recommended that the project be terminated.
28. §19.42(12). The current definition of a security used to determine what financial information filers must disclose on a statement of economic interests (SEIs) excludes only certificates of deposit and deposit accounts such as a checking or savings account. There are other types of securities that would be included in the definition provided in Wis. Stat. §551.102(28) that provide no substantial information regarding a person's economic interests that may influence their official actions. The State Legislature could simplify the SEI reporting and reduce the burden on filers without reducing transparency regarding the economic interests of public officials by excluding defined benefit retirement plans, annuities, and money market funds from the definition of security in this provision of the statutes. The definition could also exclude mutual funds and exchange-traded funds (ETFs). All of these types of securities consist of a diverse conglomeration of securities not managed under the direct or indirect control or influence of the individual.
29. §19.42(14). This provision of the statutes defines “state public official” for determining who is subject to the state code of ethics. The current definition applies to elected officials only upon assuming office, and would not apply during the period between winning an election and taking the oath of office. For the purposes of clarity and simplification, the State Legislature could expand the definition of state public official to include officers-elect; this definition should match the definition of elective state official in Wis. Stat. §13.62(6). The Legislature could create a definition for officers-elect as *having been issued a certificate of election as stated in §7.70(5)*. It is significant to note that this suggested change would not require any additional SEI filing. The major effect of this potential change would subject officers-elect to the same conflict of interest and gift provisions applicable to serving elected officials. *Source: questions from officers-elect.*
30. §19.45(12). A U.S. District Court found this provision unconstitutional. The State Legislature should repeal this provision. *Barnett v. State Ethics Board*, 817 F. Supp. 67 (1993).

31. §§19.49(2)(c)(2) and (2)(d). Section (2)(c)(2) prohibits an employee of the Commission from being a candidate for state or partisan local office. Section (2)(d) prohibits an employee of the Commission from making a contribution to a candidate for state or local office. Together these two provisions are inconsistent. If employees are allowed to be candidates for non-partisan local office, then the prohibition from contributing to their own campaign like other candidates are allowed is likely unconstitutional. The current statutes would not prohibit employees of the Commission from making contribution to non-partisan state office, which are required to register and file reports with the Commission. In order to prevent employees from partisan activity and to prevent potential conflicts of interest, the Legislature should amend these provisions to limit the candidate and contribution provisions to any state office and partisan local offices. *Source: staff.*